SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941.

NO. .....

STATE OF MISSOURI AND ROY McKITTRICK, AS ATTORNEY GENERAL OF MISSOURI, *Petitioners,*

vs.

ST. LOUIS UNION TRUST COMPANY, TRUSTEE UNDER INDENTURE OF TRUST MADE FEBRUARY 14, 1921, BY MADGE BARNEY BLAKE,

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ST. LOUIS UNION TRUST COMPANY, TRUSTEE UNDER INDENTURE OF TRUST MADE JANUARY 11, 1929, BY MADGE BARNEY BLAKE,

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ST. LOUIS UNION TRUST COMPANY, CHARLES B. MALOY AND CLARENCE E. MALOY, TRUSTEES UNDER INDENTURE OF TRUST MADE MAY 20, 1935, BY MADGE BARNEY BLAKE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinion of the Court Below.

The opinion of the Supreme Court of Missouri, filed July 21, 1941, is not, as yet, officially reported, 155 S. W. (2d) 107, (R. 115). Motion for Rehearing was overruled, October 30, 1941, (R. 139), and said opinion and judgment became final.

II.

Jurisdiction.

1. This petition is filed pursuant to Section 237b of the Federal Judicial Code (28 U. S. C. A. 344 (b)) which provides:

> "(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by appeal, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or *where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution*, treaties, or laws of the United States; *or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution*, or any treaty or statute *of*, or commission held or authority exercised under, the *United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied.* Nothing in this paragraph shall be construed to limit or detract from the right to a review on an appeal in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on an appeal might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph." (Emphasis ours.)

2. Petitioners also rely on Rule 38 of the Rules of this Court, and particularly on Paragraph 5 thereof, which provides in part:

> "5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be

granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered.

"(a) Where a State court has decided a Federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this Court."

3. The date of the judgment to be reviewed is July 21, 1941. (R. 115). Motion for Rehearing overruled, October 30, 1941. (R. 139).

4. It was contended by the petitioners here in the trial of the case in the Circuit Court of the City of St. Louis, Missouri, that Section 576 of the Revised Statutes of Missouri, 1929, Laws of Missouri, 1939, page 182, was unconstitutional and void, in that said statute violated the 14th Amendment to the Constitution of the United States. (R. 17, 20). The St. Louis Union Trust Company and Clarence E. and Charles B. Maloy, through counsel denied that said section was unconstitutional and void. (R. 19). The Supreme Court of Missouri, in its opinion (R. 118), recognized that the defendant there, one of the petitioners here, contended that Section 576, *supra*, was void because it worked to a denial of due process, and authorized non-uniformity of taxes upon the same class of subjects of taxation contrary to Section 1 of the 14th Amendment to the Federal Constitution. The Supreme Court of Missouri expressly held that Section 576, *supra*, was not void on constitutional grounds (R. 125), and based its decision and judgment on the cases of *Connolly* v. *Union Sewer Pipe Company* (1902), 184 U. S. 540, 46 L. Ed. 679, 22 S. Ct. 431; *Carmichael et al.* v. *Southern Coal & Coke Co.* (1937), 301 U. S. 495, 81 L. Ed. 1245, 57 S. Ct. 868; *Caskey Baking Co., Inc.* v. *Commonwealth of Virginia* (1941) 313 U. S. 117, 85 L. Ed. (Adv. Ops.) 831, 61 S. Ct. 881. It appears

therefore, that the Supreme Court of the State of Missouri has expressly held that Section 576, *supra*, is not invalid on the basis of any conflict with the provisions of Section 1 of the 14th Amendment to the Constitution of the United States, as interpreted by this Court.

5. The cases, upon which the petitioners rely in support of jurisdiction, are:

Blodgett v. *Silberman et al.* (1928), 277 U. S. 1, 72 L. Ed. 749, 48 S. Ct. 410;

Boynton v. *Hutchinson Gas Co.* (1934), 291 U. S. 656, 78 L. Ed. 1048, 54 S. Ct. 457;

Kelly v. *Washington ex rel. Foss Company, Inc.* (1937), 302 U. S. 1, 82 L. Ed. 3, 58 S. Ct. 87;

Coleman et al. v. *Miller et al.* (1939), 307 U. S. 433, 83 L. Ed. 1385, 59 S. Ct. 972;

State of Wisconsin and Elmer E. Barlow, as Commissioner of Taxation of the State of Wisconsin v. *J. C. Penny Company* (1940), 311 U. S. 435, 85 L. Ed. (Adv. Ops.) 222, 61 S. Ct. 246;

People of State of California v. *Thompson* (1941), 312 U. S. 672, 61 S. Ct. 711, 85 L. Ed. (Adv. Ops.) 793;

State of Alabama v. *King and Boozer* (not as yet officially reported) (1941), 86 L. Ed. (Adv. Ops.) 1, 62 S. Ct. 43.

III.

Statement of the Case.

This suit was initiated by the St. Louis Union Trust Company and Charles B. Maloy and Clarence E. Maloy, as Co-trustees, in the Circuit Court of the City of St. Louis, Missouri, under the provisions of Section 598 of the Revised Statutes of Missouri, 1929, now of 1939, for the purpose of determining whether the State of Missouri has a lien upon the assets of certain trust estates for inheritance taxes. It was submitted upon an agreed statement of facts, and the

Circuit Court for the City of St. Louis, Missouri, on the 12th day of December, 1940, found that the trust estates were liable for inheritance taxes in Missouri in the total sum of $182,349.69. (R. b, c).

Upon an appeal from the judgment of the Circuit Court of the City of St. Louis, Missouri, the Supreme Court of the State of Missouri reversed the judgment of the Circuit Court, and held that the State of Missouri was not entitled to assert a lien on the assets of certain trust estates (R. 126).

The facts upon which the Supreme Court of Missouri predicated its decision and judgment are set out as follows in the Court's Opinion (R. 116):

> "February 14, 1921, and January 11, 1929, Madge Barney Blake, a resident of Massachusetts, created a trust with the St. Louis Union Trust Company, a plaintiff herein, as trustee. May 20, 1935, she created a trust with plaintiff company and Charles B. and Clarence E. Maloy as cotrustees. The assets of the trusts created January 11, 1929, and May 20, 1935, were derived from the income of the trust of February 14, 1921. Mrs. Blake, still a resident of Massachusetts, died July 12, 1935.
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> "* * * * * * * * * * * * * * * * *
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> "The assets in the trust estates were intangible personal property consisting of various stocks, bonds, United States treasury notes, etc. At the time of Mrs. Blake's death, the value of the assets of the three trusts was respectively, $1,513,864.51, $136,472.73, and $200,452.53; total, $1,850,789.77. Mrs. Blake was to receive, for life, the net income from each trust estate. Each of the trusts provided for complete disposition of assets upon the death of Mrs. Blake.
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> "At the time of the death of Mrs. Blake, there was a Massachusetts statute (Sec. 1, Ch. 65, Gen. Laws, Tercentenary Ed.) providing for a tax upon legacies

and successions affecting property 'within the jurisdiction' of Massachusetts, and 'belonging to inhabitants' thereof, and Massachusetts, domicile of Mrs. Blake, asserted the right to tax the devolution of the respective trust assets, and to enforce such claim, brought suit in the federal district court at St. Louis, against the trustees, the St. Louis Union Trust Company and the Maloys. That cause was settled and judgment entered in favor of Massachusetts in the total sum of $85,050. This judgment was paid, plus an additional $4,000, 'all of which payments were on account of said claim (of Massachusetts) for inheritance taxes in respect of said trust estates.' It was stipulated in the present case that Massachusetts does not tax intangible personal property within the jurisdiction of the state, but belonging to nonresident decedents, even though such property is held by a Massachusetts trust company under a trust created by the nonresident decedent."

IV.

Specification of Errors.

1. The Supreme Court of Missouri erred in declaring and decreeing that the Inheritance Tax Law of the State of Missouri did not create a lien on the assets of the trust estates created by Madge Barney Blake, for inheritance taxes in the sum of $182,349.69.

2. The Supreme Court of Missouri erred in declaring and decreeing that Section 576 of the Revised Statutes of Missouri, 1929, Laws of Missouri, 1939, page 182, being a part of the Inheritance Tax Laws of said state, did not violate Section 1 of the 14th Amendment to the Constitution of the United States. The Court should have declared and decreed that such statute was unconstitutional and void, because carving out of a valid classification established by Section 573 of the Revised Statutes of Missouri, 1939, another and distinct classification, resulting in the nonuniformity of taxation of members within the class.

V.

ARGUMENT.

Summary of Argument.

Point A. The decision and judgment by the Supreme Court of the State of Missouri, in the case sought to be reviewed, is contrary to the requirements of Section 1 of the 14th Amendment to the Constitution of the United States, and is in conflict with prior decisions of this Court construing such Amendment, in that, whenever a state resorts to a classification of subjects, for the purposes of taxation, such classification must be reasonable, not arbitrary, and rest upon some ground of difference having a fair and substantial relation to the subject of the legislation, so that all persons similarly circumstanced shall be treated alike.

Point B. The Missouri Statute, Section 576 of the Revised Statutes of Missouri, 1929, denies to the citizens of the several states, which states have not enacted a transfer tax or death tax of any character in respect of residents of Missouri, or a similar reciprocal exemption statute, equal protection of the Laws of the State of Missouri, so that all members of the class subject to taxation will not be treated equally.

Point A.

The decision and judgment by the Supreme Court of the State of Missouri in the case sought to be reviewed is contrary to the requirements of Section 1 of the 14th Amendment to the Constitution of the United States, and is in conflict with prior decisions of this Court construing such Amendment, in that whenever a state resorts to a classification of subjects, for the purposes of taxation, such classification must be reasonable, not arbitrary, and rest

upon some ground of difference having a fair and substantial relation to the subject of the legislation, so that all persons similarly circumstanced shall be treated alike.

It has long been regarded as axiomatic since the decision of this Court in the very early case of *Mager* v. *Grima et al.* (1850), 49 U. S. 490, 12 L. Ed. 1168, that a state may regulate the manner and terms upon which property, both real and personal within its jurisdiction, may be transmitted by last will and testament, or by inheritance; and providing, who may take and who shall not. In other words, the state is untrammeled in its power to tax the privilege of succeeding to the property of a decedent. In imposing the tax, the state may classify the type and kind of property transferred or received, or the amount or value of property transferred or received, or the relationship of transferees, or the character of the transferees. *Watson v. State Comptroller of New York* (1920), 254 U. S. 122, 65 L. Ed. 170, 41 S. Ct. 43.

That power however, as pointed out by Mr. Justice Stone in the case of *Stebbins* v. *Riley* (1925), 268 U. S. 137, 69 L. Ed. 884, 45 S. Ct. 424, is subject to the limitation of Section 1 of the 14th Amendment to the Constitution of the United States, in that, the taxing act must operate equally on persons, according to their relations. The Justice quoted approvingly from the case of *Magoun v. Illinois Trust and Savings Bank et al.* (1898), 170 U. S. 283, 42 L. Ed. 1037, 18 S. Ct. 594, and said:

> " 'It only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may . . . . . In other words, the state may distinguish, select, and classify objects of legislation, and necessarily this power must have a wide range of discretion.' "

And then, laid down the rule, which we strenuously assert has been violated by the Supreme Court of Missouri in its decision and judgment, in the following language:

> "The taxing statute may, therefore, make a classification for purposes of fixing the amount or incidence of the tax, provided only that all persons subjected to such legislation within the classification are treated with equality, and provided further that the classification itself be rested upon some ground of difference having a fair and substantial relation to the object of the legislation. * * *"

In the most recent case of *Carmichael, et al. v. Southern Coal & Coke Co.*, (1937), 301 U. S. 495, 81 L. Ed. 1245, 57 S. Ct. 868, Mr. Justice Stone again emphasized the range which state taxing statutes may take in the selection of subjects for taxation, and reiterated the rule announced in the case of *Stebbins v. Riley, supra.* Within the limits of the argument, here permitted, it would be impossible to analyze each of the decisions by this Court construing the taxing power of states, and to show that none of such decisions sanction the enactment of any statute, which may be said to be comparable to Section 576 of the Revised Statutes of Missouri, Laws of Missouri, 1939, page 182. Suffice it to say, that the decisions of this Court, before referred to, announcing the principle of classification and the limits within which a state may classify, clearly show that Section 576, *supra*, is in conflict with the provisions of Section 1 of the 14th Amendment to the Constitution of the United States, and the decisions of this Court construing such Amendment.

That the Legislature of Missouri was mindful of the requirements of the 14th Amendment, in the respects before noticed, is demonstrated by the fact that Section 572 of the Revised Statutes of Missouri, 1929, now Section 573 of the Revised Statutes of Missouri, 1939, as printed in Appendix, only imposes a tax at a certain rate on persons

therein named, measured by the amount of property received at its clear market value at the date of the death of decedent. The rates of tax could vary in each estate, depending upon the relationship of the persons to the decedent. *In re: Rosing's Estate* (1935), 337 Mo. 544, 85 S. W. (2d) 495. It is therefore apparent, that such classification of persons for the purpose of an inheritance tax is embraced within the doctrine of classification sanctioned by this Court in the cases of *Magoun* v. *Illinois Trust and Savings Bank et al.; Stebbins* v. *Riley* and *Watson* v. *State Comptroller of New York, supra*, because it operates equally between all members of the classes, whether resident or non-resident, depending upon their relationship to the decedent, and the amount of property received. Nevertheless, the Supreme Court of Missouri, in its opinion, in the case sought to be reviewed, ignores these principles.

Point B.

The Missouri Statute, Section 576 of the Revised Statutes of Missouri, 1929, denies to the citizens of the several states, which states have not enacted a transfer tax or death tax of any character in respect of residents of Missouri, or a similar reciprocal exemption statute, equal protection of the laws of the State of Missouri, so that all members of the class subject to taxation will not be treated equally.

It is provided by Section 576 of the Revised Statutes of Missouri, 1929, Laws of Missouri, 1939, page 182, as follows:

> "The tax imposed by this article in respect of personal property (except tangible personal property having an actual situs in this state) shall not be payable (a) if the transferor at the time of his death was a resident of a state or territory of the United States, or of any foreign country, which at the time of his death did not impose a transfer tax or death tax of any character in respect of property of residents of this state (except tangible personal property having an actual situs in

such state or territory or foreign country), or, (b) if the laws of the state, territory or country of residence of the transferor at the time of his death contained a reciprocal exemption provision under which non-residents were exempted from transfer taxes or death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein), provided the state, territory or country of residence of such non-residents allowed a similar exemption to residents of the state, territory or country of residence of such transferor. For the purposes of this section the District of Columbia and possessions of the United States shall be considered territories of the United States. The terms 'foreign country' and 'country' as used herein shall mean both any foreign country and any political subdivision thereof, and either of them of which the transferor was domiciled therein at the time of his death."

(1) *The Missouri Statute, viewed historically from the standpoint of the decisions of this court, presents a matter of wide public interest.*

The challenged section of the Missouri Inheritance Tax Law becomes increasingly important, in light of its history. This is true when it is considered that, its enactment is one of the results of the decision by this Court in the case of *Blackstone* v. *Miller* (1903), 188 U. S. 189, 47 L. Ed. 439, 23 S. Ct. 277, respecting the taxation of intangibles in more than one state. The holding of this Court in that case remained the law until the decision of this Court in the case of *Farmers Loan and Trust Company* v. *Minnesota* (1930), 280 U. S. 204, 74 L. Ed. 371, 50 S. Ct. 98. While this Court from 1903 to 1930 was charting the course within which the state's power to tax could be exercised, some thirty-four states had joined in a movement which would achieve only a single place of taxation of intangibles, under varying circumstances. The phrase, "varying circumstances" is used advisedly, and seems adequately to serve as an approach

to the question for decision. See 28 Columbia Law Review 806; 43 Harvard Law Review 641; 18 Boston University Law Review 39.

It should also be noticed historically, that members of this Court (Mr. Chief Justice Stone, Mr. Justice Holmes and Mr. Justice Frankfurter) have also recognized the need for a common scheme, *Kidd* v. *Alabama*, (1903), 188 U. S. 730, 732, 47 L. Ed. 669, 23 S. Ct. 401, compact, 34 Yale L. J. 685, or equitable and reciprocal means, *First National Bank of Boston* v. *Maine* (1932), 284 U. S. 312, 76 L. Ed. 313, 52 S. Ct. 174; *Curry* v. *McCanless* (1939), 307 U. S. 357, 83 L. Ed. 1339, 59 S. Ct. 900, whereby taxation of the same property in separate jurisdictions could be eliminated.

By 1932 the need for reciprocity between the several states, providing for a single place of taxation of intangibles, became unnecessary, in light of this Court's decision in *First National Bank of Boston* v. *Maine*, *supra*. In that case, it was held that intangible personal property could only be subjected to inheritance taxes at the domicile of the decedent, excepting however, where such property may have acquired a situs other than that of the owner's domicile. See also, *Baldwin et al.* v. *Missouri* (1930), 281 U. S. 586, 74 L. Ed. 1056, 50 S. Ct. 436.

It is to be seen therefore, that the various reciprocal statutes assumed a cloak of superfluousness; but as far as Missouri was concerned, the reciprocal statute, presented in the case here sought to be reviewed, was not repealed until 1939. Laws of Missouri, 1939 p. 182. Since, however, the recent decision by this Court in the cases of *Curry* v. *McCanless*, *supra*, and *Graves* v. *Elliott* (1939), 307 U. S 383, 83 L. Ed. 1356, 59 S. Ct. 913, once again, this type of legislation becomes increasingly important, in order that the problem of double taxation of the same property in separate jurisdictions may be avoided. Missouri has met the problem from a constitutional aspect, as well as a practical one, *Farmers Loan and Trust Company v. Minn.*, *supra*, by exempting, in the measure of the tax, intangible

personal property of non-residents (R. 125). We say measure of the tax, because the tax is not imposed on the property, as such. It is imposed on the right measured by the amount of property received, *In Re: Rosing's Estate*, 337 Mo. 544, 85 S. W. (2d) 495. In order to secure the amount of the taxes, a lien attaches to the property received. Sections 578, 593 and 598, of Revised Statutes of Missouri, 1939.

A model reciprocity statute, such as the one presented in the case sought to be reviewed, we respectfully submit, is not without constitutional infirmity, and is apparently still in force in at least 33 states. See 18 Boston University Law Review 39 (1938). Consequently, the character of the constitutional question presented should challenge this Court's attention, because the Supreme Court of Missouri has decided a federal question of substance, in such a way as not to be in accord with applicable decisions of this Court.

(2) *The effect of the Missouri Statute is to tax non-residents, while exempting residents; and to exempt certain non-residents and tax other non-residents.*

In our consideration of the challenged section of the Missouri Statute, it is not amiss to observe the language of the Supreme Court of Missouri in construing such section (R. 125). It was said:

> "We think defendant fails to appreciate that our reciprocity statute did *not deal* with the *persons* to whom intangibles may pass upon the death of the owner, but it dealt with *states* which did not impose an inheritance tax upon intangibles in such states and owned by residents of this state at time of death. The classification of intangible personal property for the purpose of taxation or non-taxation, under the act, is based upon the ownership thereof and whether the owner, the transferor under the statute, is or is not a resident of a state, at the time of his death, which does or does not impose a tax upon intangibles in such state

and owned by a resident of this state at the time of his death. We cannot appreciate how such could create a class within a class or work to nonuniformity as defendant contends. * * "

That such statute did deal with states may be admitted. On the other hand, in determining whether or not constitutional infirmity exists, its effect on the persons exempted from or liable for the exaction must be considered. *State of Wisconsin* v. *J. C. Penny Co.* (1940), 311 U. S. 435, 85 L. Ed. (Adv. Ops.) 222, 61 S. Ct. 246.

The statute, as we see it, exempts citizens of the several states which do not have a *transfer tax or death tax of any character*, in respect of property of citizens of this state. It solicits the citizens of the several states to enact a similar reciprocal exemption statute, in order that the citizens of the State of Missouri may be exempted in the several states, in respect of their property.

The holding of the Supreme Court of Missouri to the effect that the basis for the classification of intangible personal property and the consequent exemption is made to depend (1) on the transferor's domicile and (2) whether the state of domicile exempts residents of Missouri, results in unjust and oppressive consequences, so that it squarely conflicts with Section 1 of the 14th Amendment to the Constitution of the United States, because:

(a)

The basis for the exemption is made to depend upon the forbearance of enactment of a transfer tax or death tax of any character, in respect of property of citizens of this state. This reason, standing alone, could be fertile field for variant administrative and judicial rulings.

(b)

The passage, by other states, of similar reciprocal exemption laws would likewise support variant administrative and judicial rulings.

(c)

The transferor's residence is without fair and substantial relation to the subject of the tax, because the Supreme Court of Missouri has held that subject of the tax is on the right of heir or legatee to receive, *In re: Rosing's Estate, supra,* and not on the right to transfer or transmit property, at or after death.

(d)

It discriminates between different classes of non-residents, thereby creating a class within a class, and denying to those discriminated against equal protection of the laws.

(e)

Equal protection of the laws is not achieved as between residents and non-residents as classes.

Lettered reasons (a) and (b) seem to demonstrate how arbitrary and hostile such a classification may be, when the right to the exemption may depend upon the whim or caprice of the tax administrators in making the determination of whether or not there be a transfer tax or death tax within the state of the domicile of the decedent, or a similar reciprocal exemption statute, which exempts citizens of the State of Missouri in respect of their property. See, 43 Harvard Law Review 641. Likewise, judicial decisions could conceivably rest upon the application of rules of statutory construction e. g., strict or liberal, in determining the legislative intention, *In Re: Kansas City Star Company* (1940), 346 Mo. 658, 142 S. W. (2d) 1029, and thereby defeat the right of a non-resident heir or legatee to be exempted from the payment of the tax. It is further submitted that the discrimination, which could result from variant administrative and judicial rulings, is hostile, rather than incidental or occasional. *Maxwell* v. *Bugbee* (1919), 250 U. S. 525, 63 L. Ed. 1124, 40 S. Ct. 2. Hence, the basis upon which the Supreme Court of Missouri announced its

decision in the case sought to be reviewed shows how unreasonable the classification may be in its effect.

In consideration of reason lettered (c), we submit that the power of the state to impose a tax on the right to receive property is not dependent upon the death of the decedent in that state, and none of the cases decided by this Court emphasize that fact. *Graves* v. *Elliott* (1939), 307 U. S. 383, 83 L. Ed. 1356, 59 S. Ct. 913; *Bullen* v. *Wisconsin* (1916), 240 U. S. 625, 60 L. Ed. 830, 36 S. Ct. 473. If, however, the state has jurisdiction to impose a tax upon property, such as here involved, a tax may be imposed upon the devolution by death, of such property, *Rhode Island Hospital Trust Company* v. *Doughton* (1926), 270 U. S. 69, 70 L. Ed. 470, 46 S. Ct. 256; *Snyder* v. *Bettman* (1903), 190 U. S. 249, 47 L. Ed. 1035, 23 S. Ct. 803, upon the theory of benefit and protection. *Graves* v. *Elliott*, *supra*. Since therefore, the Supreme Court of Missouri has held that the tax is imposed upon the right of the heir or legatee to receive property, *In re: Rosing's Estate*, *supra*, it follows that when the exemption from the tax is made to depend upon the residence of the transferor, that such residence is without fair or substantial relation to those who are required to pay the tax, *Colgate* vs. *Harvey* (1935), 296 U. S. 404, 80 L. Ed. 299, 56 S. Ct. 252. Consequently, the statute, as construed by the Supreme Court of Missouri, with respect to the classification of the intangible personal property being dependent upon the transferor's residence demonstrates that such classification is without rationale since, clearly, the inheritance tax law was enacted to raise revenue.

Of (c) and (d)—under point A of this Argument, we asserted that the inheritance tax of the State of Missouri was imposed, based upon the relationship of the heir or legatee to the decedent, which tax was measured by the amount of property received, and the tax being increased progressively as the amount of the benefit increased. The tax applies to residents or non-residents. It is to be seen however, that if the tax imposed by Section 573 of the

Revised Statutes of Missouri, 1939, shall not be payable by certain non-resident heirs or legatees under the provisions of the challenged section here, Section 576, *supra*, then other non-resident heirs or legatees within the same classification would be taxed. Thus, the challenged section discriminates between members of the same class of non-residents, creating a class within a class, and resulting in non-uniformity of taxation. On the other hand, it may be urged that as between a resident heir or legatee of Missouri and a resident heir and legatee of Massachusetts, that equality of treatment is achieved, since Massachusetts has not, and does not impose a tax on Missouri residents, and Missouri does not impose a tax on residents of Massachusetts. Nevertheless, this fact stands out: *Missouri is the taxing state*, and must treat *all* non-residents within the class on an equal basis, without regard to the difference of residence.

The inequality and discriminatory treatment of non-residents, in the interest of brevity, is clearly apparent, when illustrated, as follows:

I.

In 1930, "A", domiciled in a reciprocal state created a trust of intangibles in the sum of $20,000.00, in Missouri, the taxing state, reserving the income therefrom during his life, the principal of the trust to go to his son, "B", a non-resident of the State of Missouri.

II.

In 1930, "C", domiciled in a non-reciprocal state created a trust of intangibles in the sum of $20,000.00, in Missouri, the taxing state, reserving the income therefrom during his life, the principal of the trust to go to his son, "D", a non-resident of the State of Missouri.

III.

In 1930, "X", domiciled in a reciprocal state created a trust of intangibles in the sum of $20,000.00, in Missouri, the taxing state, reserving the income therefrom during his life, the principal of the trust to go to his son, "Y", a resident of the State of Missouri.

From the above illustrations, "B", "D" and "Y" are all within the same class, contemplated by the provisions of Section 573, and would be subjected to the payment of a tax at the rate of 1% of the value of the property received, whether tangible or intangible. Yet, under the provisions of Section 576, *supra*, "B" and "Y" would not be required to pay a tax, while "D", within the same class as "B" and "Y", would be subjected to a tax, resulting in discrimination as between "B" and "D", and a denial of equal protection of the laws as between "Y" and "D". *Maxwell* v. *Bugbee* (1919), 250 U. S. 525, 63 L. Ed. 1124, 40 S. Ct. 2; *Stebbins* v. *Riley* (1925), 268 U. S. 137, 69 L. Ed. 884, 45 S. Ct. 424, *Travis* v. *Yale & Towne Manufacturing Company* (1920) 252 U. S. 60, 64 L. Ed. 460, 40 S. Ct. 228.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, and that to such end a writ of certiorari should be granted, and this Court should review the decision of the Supreme Court of Missouri, and finally reverse it.

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